REMARKS

Petition for Extension of Time

It is hereby requested that the period for response to the Examiner's Action dated

October 1, 2008, be extended one month, from January 1, 2009, to February 2, 2009,

February 1, 2009, being a Sunday.

The Commissioner is hereby authorized to charge the extension fee and any additional

fees associated with this communication to Deposit Account No. 50-4364.

I.   **Summary of the Office Action and this Reply**

Claims 1-24 are pending in the application. Claims 1, 3-19 and 21-24 stand rejected

under 35 U.S.C. §103(a) as being unpatentable over U.S. Patent No. 5,664,111 to Nahan et al.

("Nahan") in view of U.S. Patent No. 6,076,070 to Stack ("Stack"). Claim 2 stands rejected

under 35 U.S.C. §103(a) as being unpatentable over Nahan and Stack in view of U.S. Patent

No. 6,202,051 to Woolston ("Woolston"). Claim 20 stands rejected under 35 U.S.C. §103(a)

as being unpatentable over Nahan and Stack in view of U.S. Patent No. 5,873,069 to Reuhl et

al. ("Reuhl").

In this Reply, claims 1, 2, 4, 7 and 21 are amended; new claims 25-27 are added.

Applicant does not acquiesce to the Examiner's characterizations of either the art of

record or Applicant's subject matter recited in the pending claims. Further, Applicant is not

acquiescing to the Examiner's statements as to the applicability of the prior art of record to the

pending claims by filing this Reply. This Reply is intended to be a full and complete

response to the Office Action dated November 19, 2008.

II.   Brief Discussion of the Selected Cited Art

A.   Nahan

Nahan discloses a system and method for electronically executing transactions with a preprogrammed main computer having data and image storage and retrieval equipment. A plurality of electronic images of works of art which are for sale are created by at least one listing dealer and stored on the storage equipment associated with the main computer. Data is input about each stored image and input data is associated with each corresponding stored image. A plurality of preprogrammed intelligent terminals each having data storage and retrieval equipment, at least one display screen and at least one input device, located at at least one listing dealer location and at at least one buying dealer location communicate with the main computer. Search criteria are input through the intelligent terminals for selecting at least one of the stored electronic images for review. Abstract.

B.   Stack

Stack discloses an apparatus and method for online price comparison of goods via a computer network. In Stack, there are competing online vendors, each offering goods for sale at respective prices. When a buyer seeks to buy a good from a first vendor, a price comparison may be initiated. The price comparison involves retrieving the competing vendor's price for the same good and comparing the first vendor's price to the competing vendor's price. If the competitor's price is less than or equal to the vendor's price, the competitor's price is compared to a predetermined price threshold set by the vendor. If the competitor's price is above the threshold, the vendor's price is lowered, presumably to a price lower than the competitor's price. Stack, col. 3, line 50 - col. 4, line 15.

III.   Response to 103 Rejections

Claims 1-24 stand rejected under 35 U.S.C. §103(a) as being obvious over various

combinations of Nahan, Stack, Woolston and Reuhle. Each of independent claims 1, 16, 18 and

21 stand rejected under 35 U.S.C. §103(a) as being obvious over various combinations of Nahan

and Stack. It is well-established that for a proper rejection under section 103, all claim

limitations must be taught or suggested, or otherwise rendered obvious, by the prior art.

> **A.   The Proposed Combination Of Nahan And Stack Fails To Teach Or
> Suggest Receiving The Seller's Agreement To Sell The Good At A Fixed
> Price To Be Determined By The Marketeer Controller As A Function Of
> Another's Price, In Accordance With A Predetermined Method**

The claimed invention relates to an intermediary marketeer's facilitation of sales to

buyers of goods of independent, third-party sellers. Exemplary independent claim 1 requires

that the marketeer's controller computer (1) receives data from an independent seller, (2)

queries a vendor to determine the vendor's price for a comparable good, (3) receives the

vendor's price for the comparable good, and (4) establishes a sale price for the seller's good

by deriving, using a predetermined method, the sale price from the vendor's price for the

comparable good. Thus, the seller's good is priced as a function of another party's (the

vendor's) price for a comparable good.

In accordance with amended claim 1, the data received from the independent seller

"represent[s] the independent seller's agreement to sell the good at a fixed price to be

determined by the marketeer controller as a function of another party's price, in accordance

with a predetermined method." This is neither taught nor suggested by Nahan and/or Stack.

Nahan discloses a system permitting art dealers to view and buy items in each others'

inventory of items. Each item has an associated price in the system. The selling art dealer's

price is fixed (and is independent of any price that may be paid to the buying art dealer by a buyer, outside of the system). See Nahan, col, 8, Table 1; col. 13, lines 13-28.

Somewhat similarly, Stack discloses that each item for sale in its system has a specified price (the vendor's price), and that the system may compare the vendor's price to a competitor's price, and as a result may adjust the vendor's specified price. The Examiner's citations to col. 2, lines 34-50 and col. 3, lines 45-53, col. 4, lines 31-33 on page 3 of the Action are inapposite. The cited portions relate only to the performance of a price comparison in connection with a vendor's pricing of the vendor's goods by the vendor's system, and do not relate to an independent seller's agreement to sell his good at an undetermined price to be determined by a marketeer's controller computer. In contrast to Stack, in which the seller of goods retains pricing control for his goods using the seller's pricing system, the claimed invention relates to an independent seller's relinquishing of pricing control to another party, namely, the marketeer.

Neither Nahan nor Stack, taken alone or in combination, teaches or suggests, or otherwise renders obvious, receiving data that represents the independent seller's agreement to sell the independent seller's good at a fixed price to be determined by a marketeer controller as a function of another party's price, in accordance with a predetermined method.

For at least this reason, reconsideration and withdrawal of the rejection of claims 1-15 are requested respectfully.

B.   **The Proposed Combination Of Nahan And Stack Fails To Teach Or Suggest Establishing A Sale Price For An Unpriced Good**

As amended herein, claim 1 further recites "<u>establishing</u> a sale price <u>at which</u> the good may be purchased by a buyer from the independent seller, a pricing agent stored in the

memory of the marketeer controller receiving the vendor's price <u>as input and</u> using a predetermined method <u>to derive the sale price and provide it as output</u>." As discussed above, the seller agrees to sell the good at an unspecified price, the price to be determined by the marketer. Amended independent claim 21 recited a first program stored in the memory for receiving from the seller's computing device <u>data identifying the seller's good apart from any price for the good.</u>

Thus, the marketer controller computer establishes a sale price for a good that does not have a price. Therefore, the claimed invention is neither taught nor suggested by Nahan, which involves sale within the system at a specified price, e.g., from a listing dealer to a buying dealer at the listing dealer's specified wholesale price.

Further, the claimed invention is neither taught nor suggested by Stack, which involves an <u>optional</u> price comparison (see Figs. 2A, 3), and <u>possible</u> adjusting of the vendor's <u>already-established, original price</u> for a good based upon a competitor's price for the same good. See Stack, col. 3, lines 55-58. Further still, it should be noted that Stack's approach, involving possible adjustment of an original, already-established price, provides an entirely different result than the claimed invention, which involves establishment of a price for an unpriced item. As described in Stack, there is an original price, and if the price comparison process does not receive a vendor's price from a vendor, the price comparison process terminates. Stack, col. 3, lines 55-61; Figs. 3 and 4. This leaves the buyer with the original vendor price at which the buyer may complete the transaction. In contrast, there is no price in the context of the claimed invention if a price response is not received from the vendor. Further still, the claimed invention is neither taught nor suggested, nor otherwise rendered obvious, by Nahan in view of Stack.

For at least this reason, reconsideration and withdrawal of the rejection of claims 1-15 and 21-24 are requested respectfully.

C. The Proposed Combination Of Nahan And Stack Fails To Teach Or Suggest Querying A Plurality Of Vendors And Deriving A Sale Price From A Lowest Price Of The Vendors

Independent claim 16 is directed to a computer-implemented method for pricing goods of independent sellers using a marketeer controller capable of communicating via a communications network, the marketeer controller including a CPU and a memory operatively connected to the CPU.

The claimed method involves the marketeer controller's "querying a plurality of third parties' vendor controllers, via the communications network to determine each third party's price of a comparable good." The method further involves "equating an index price to a lowest price of the third parties' prices; and deriving a sale price for the independent seller's good from the index price using a predetermined method." Thus, in pricing an independent seller's good, the marketeer controller obtains multiple prices from other vendors, and derives a sale price for the seller's good from a lowest price of the multiple vendors. Thus, a low price for the seller's good can be ensured by, for example, discounting a lowest price of multiple competing vendors.

Neither Nahan nor Stack, taken alone or in combination, teaches or suggests, or otherwise renders obvious, querying multiple vendors and deriving a sale price from a lowest of multiple other vendor's prices. Furthermore, the Action does not assert to the contrary. The Examiner's citation on page 3 of the Action to col. 3, lines 40-43 of Stack (with refer3ence to claim 4) is inapposite, as it is a citation to "Fig. 5 shows an embodiment of apparatus on which the method of the invention can be implemented. DETAILED

DESCRIPTION OF THE PREFERRED EMBODIMENTS." Further, the disclosure at col. 2,

lines 40-43 merely recites "[i]t is yet another object of the invention to provide a price

comparison method whereby the item price can be reduced if a competitor's price if lower,"

which is not a teaching or suggestion of querying multiple vendors and deriving a sale price

from a lowest of multiple vendors' prices.

For at least this reason, reconsideration and withdrawal of the rejection of claims 16-

17 are requested respectfully.

D.   **The Proposed Combination Of Nahan And Stack Fails
      To Teach Or Suggest Pricing A Good In Used Condition
      As A Function Of A Comparable Good In New Condition**

Independent claim 18 is directed to a computer-implemented method for pricing

goods of independent sellers using a marketeer controller capable of communicating via a

communications network, the marketeer controller including a CPU and a memory

operatively connected to the CPU.

The method involves "receiving from an independent seller . . . data identifying the

independent seller's good, the independent seller's good being a certain good in used

condition" and "querying a vendor's controller . . . to determine the vendor's price for a

comparable good, the comparable good being the certain good in new condition." The

method further involves "deriving a sale price for the independent seller's [used] good from

the vendor's price for the comparable [new] good using a predetermined method established

by the marketeer controller, the predetermined method comprising discounting the vendor's

price for the comparable [new] good to determine the sale price for the independent seller's

[used] good." This method for pricing used goods as a function of prices for comparable new

<u>goods</u> is neither taught nor suggested, nor otherwise rendered obvious, by Nahan and Stack, taken alone or in combination. Further, the Action is devoid of any assertion to the contrary.

For at least this reason, reconsideration and withdrawal of the rejection of claims 18-20 are requested respectfully.

New Claims 25-27

Independent claim 25 is directed to a computer-implemented method for offering for sale goods of independent sellers at specified sales prices, the method being computer-implemented by a marketeer's marketeer controller computer capable of communicating via a communications network, the marketeer controller computer being configured for electronic communication via the communications network and including a microprocessor and a memory operatively connected to the microprocessor. The method involves the marketeer controller computer receiving from an independent seller "data . . . representing the independent seller's agreement <u>to sell the good at an unspecified fixed price to be subsequently determined according to a specified pricing method</u>." Thus, the method recites receiving an independent seller's agreement to sell a good at an unspecified fixed price, provide that the marketeer will determined the price according to a specified pricing method. Claim 25 further requires that the marketeer controller computer stores the data in the memory to add the good to a list of goods registered for sale with the marketeer, <u>the good being listed for sale at an unspecified price</u>." This is neither taught nor suggested by Nahan or Stack. Both Nahan and Stack involve a specified price for the listed items.

Further, claim 25 recites a method in which the price for a particular buyer is determined dynamically, in response to the marketeer controller computer's receipt from that particular buyer, stating "in response to the marketeer controller computer's receipt from a

buyer, via the communications network, an expression of interest in purchasing the good," the marketing controller computer queries a vendor, receives the vendor's price for a comparable good, derives a sale price at which the buyer may purchase the good from the independent seller, and then presents the good to that particular buyer for purchase from the independent seller at the sale price.

Dependent claim 27 require that the predetermined pricing method to be used to derive a price for the independent seller's good is set by the independent seller. Neither Nahan nor Stack, alone or in combination, teaches or suggests that an independent seller can specify a method to be used to by a marketeer (third party) to price the independent seller's good.

For these reasons, allowance of claims 25-27 are requested respectfully.

CONCLUSION

In view of the foregoing amendments and remarks, Applicants believe claims 1-27 to be patentable and the application in condition for allowance, and request respectfully issuance of a Notice of Allowance. If any issues remain, the undersigned requests a telephone interview prior to the issuance of an action.

Respectfully submitted,

Date: February 2, 2009

/Gregory S. Bernabeo/
Gregory S. Bernabeo
Reg. No. 44,032

Saul Ewing LLP
Centre Square West
1500 Market Street, 38th Floor
Philadelphia, PA 19102-2186
Tel: 215-972-7755
Fax: 215-972-4156